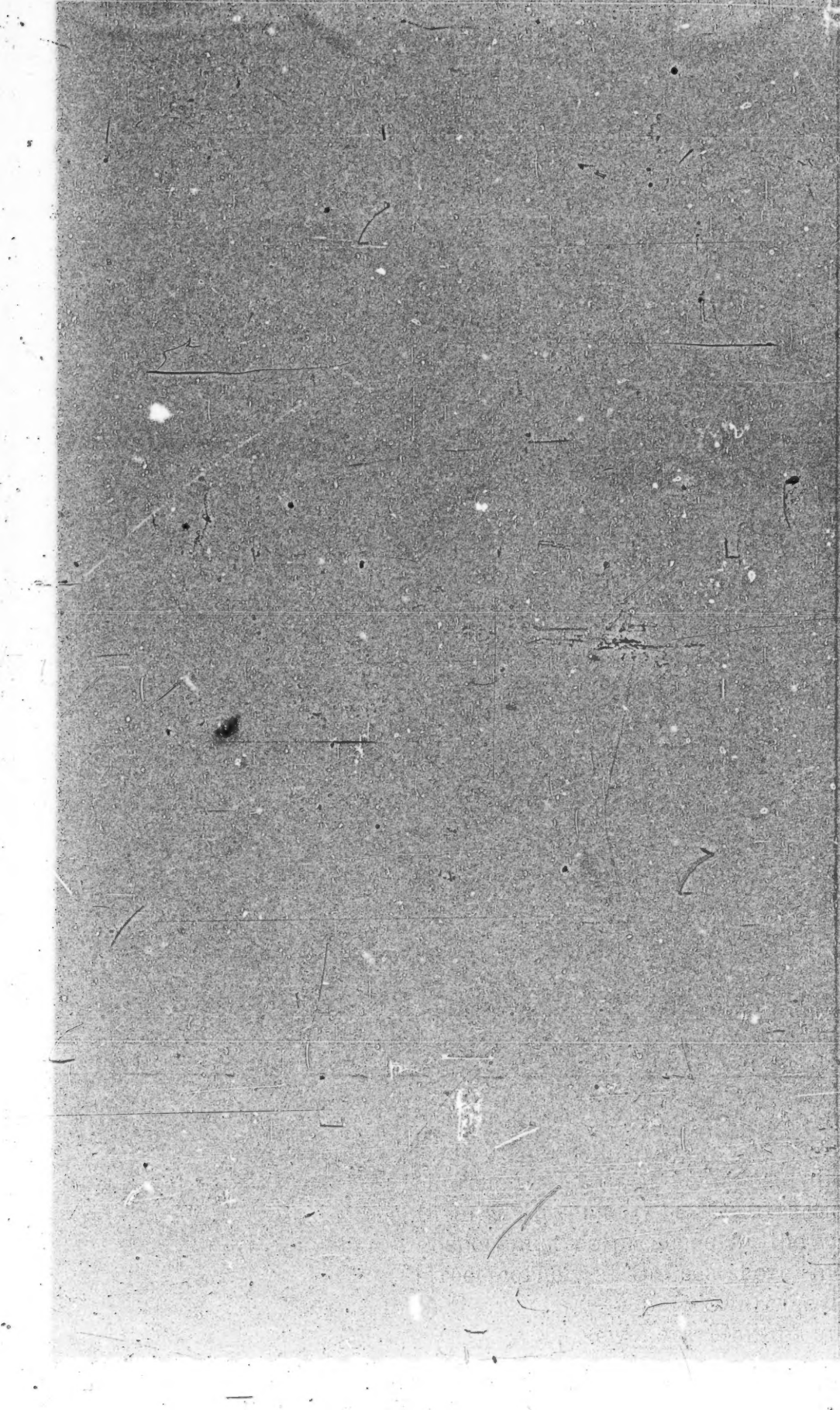

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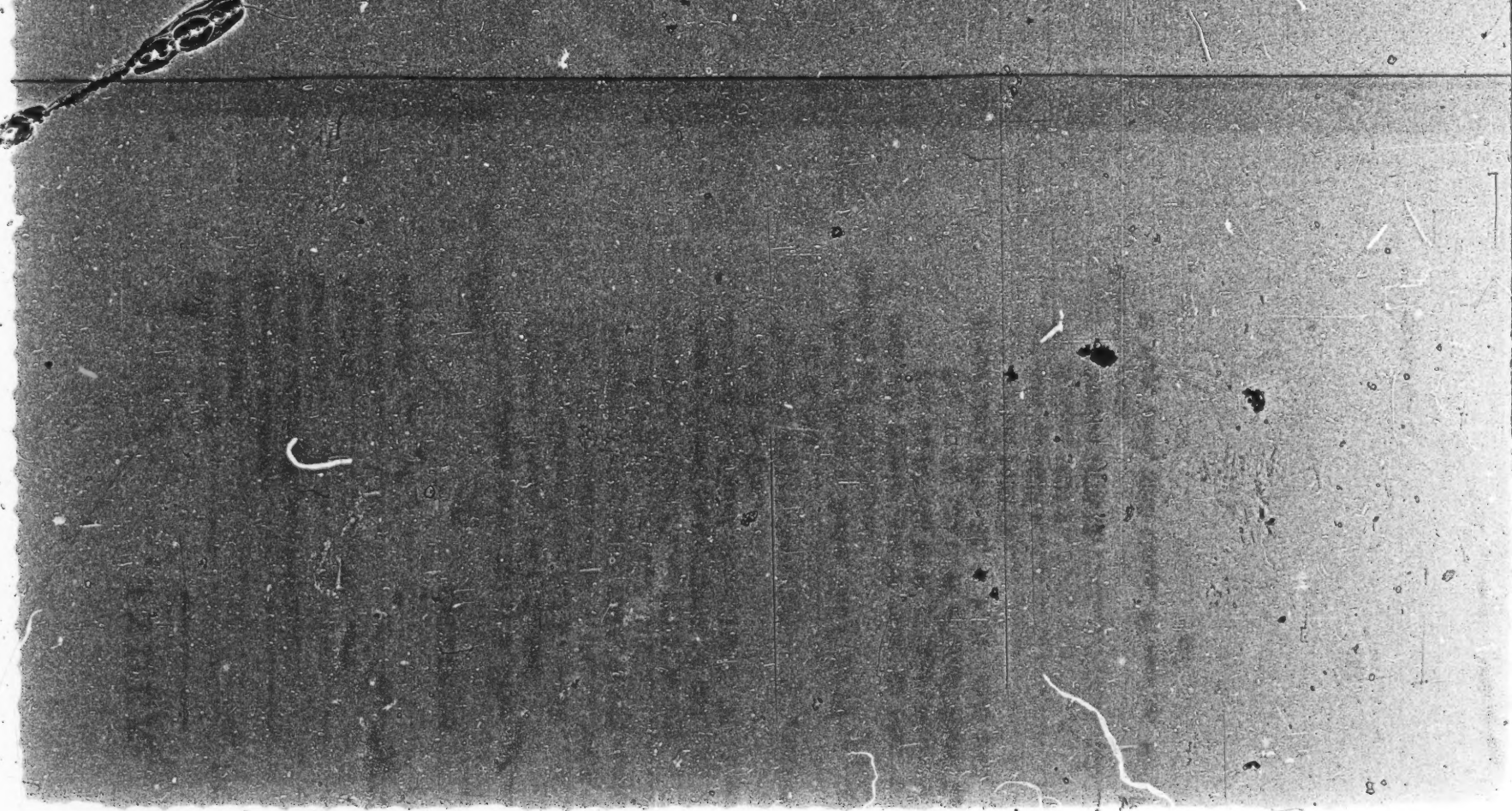

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 777

GEORGE LEWIS DICKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 122-143) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1953 (R. 142). On March 23, 1953, the time for filing a petition for a writ of certiorari was extended to May 8, 1953, by order of Mr. Justice Douglas, and it was filed on May 4, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether there was any basis in fact to sustain the local Selective Service Board's denial of petitioner's claim to exemption as a minister of religion.

2. Whether the local board adequately summarized his oral testimony at the hearing on his claim to exemption in accordance with Selective Service regulations.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Selective Service Act of 1948 and regulations issued thereunder are set forth in the Appendix, *infra*, pp. 19–22.

STATEMENT

On August 3, 1951, a one-count indictment was returned in the United States District Court for the Northern District of California charging petitioner with knowingly failing and refusing to submit to induction into the armed forces, in violation of Section 12 of the Selective Service Act of 1948, 62 Stat. 604, 50 U. S. C. App. 462 (a), *infra*, p. 20. Having waived a jury (R. 6), petitioner, after trial, was found guilty as charged by the court and sentenced to two years' imprisonment (R. 25–26). On appeal, petitioner did not deny his refusal to submit to induction, but contended (1) that the local board's failure adequately to summarize his oral testimony in writing rendered his induction order illegal and void, and (2) that there existed no basis in fact for the board's denial of his claim for exemption as a minister of religion. The Court of Appeals for the

Ninth Circuit unanimously affirmed the conviction (R. 122–143).

The events preceding petitioner's refusal to submit to induction may be summarized as follows:

Petitioner registered under the Selective Service Act on September 15, 1948 (Gov. Ex. 1, R. 33). On November 15, 1948, he was sent a classification questionnaire (Gov. Ex. 2) which he executed and returned. In this questionnaire he indicated that he had been "a minister of the Jehovah's Witnesses" since July 1, 1947, but that he had "* * * not been formally ordained as such" (*Id.*, p. 3). He indicated under "Series VIII, Present Occupation" that "I am a minister and support myself by doing radio work at night." He also stated, in the spaces which called for a description of his work, the following: "test tubes and repair radar (interrogator responder) equipment." He stated that "I have worked 1/3 years in my present trade" and "I do expect to continue indefinitely in it" (*Id.*, p. 4). He indicated as his employer, "The United States Navy, San Francisco Naval Shipyard—Hunter's Point," and he stated that he entered on his present job on June 29, 1948, making about $11.36 per day and working about 40 hours per week. He indicated as the "other business or work in which I am now engaged," the word "minister" (*Id.*, p. 5). He stated that he had previously worked for two years as a radio mechanic, and had been educated in this field in trade school and college (*Id.*, pp. 5–6). Although he originally signed the space in which

conscientious objectors indicate their desire so to register, he stood out his signature before sending in the questionnaire.

He listed as a physical condition which would in his opinion disqualify him from service, "allergy to dust causing asthmatic attacks" (*Id.*, p. 7).

Finally, he stated that in his opinion his classification should be Class 4–D.

On the basis of the questionnaire, petitioner was classified 1–A on July 31, 1950, and he was mailed a notice to such effect on August 2, 1950 (R. 34). On August 25, 1950, petitioner wrote his local board acknowledging the notice of classification and requesting an oral hearing on the basis that since he filed his questionnaire there had been an important modification of his vocation entitling him to draft exemption (Gov. Ex. 3; R. 34–35). In a letter dated September 2, 1950, the local board members requested proof from him that he had been ordained a minister as claimed, and advised him that he could appear for an oral hearing if he desired (Gov. Ex. 3; R. 34–35).

On September 7, 1950, petitioner appeared before the board. Mrs. Rose Brock, Selective Service Coordinator who appeared as a government witness at the trial, made the following handwritten summary of petitioner's testimony at the hearing (Gov. Ex. 4, R. 35–36):

> Dickinson. Public building where he preaches. Has not been ordained. Devotes his full time to the work of preaching. Supports himself through this work. Jehovah's Witness.

On September 15, 1950, the local board members notified him by letter that he was being continued in the 1-A classification (R. 36).

On September 21, 1950, petitioner requested that his case be brought before the Appeal Board (Gov. Ex. 5; R. 36). He attached to the letter a statement to the effect that, as his customary vocation he preached and taught the principles of Jehovah's Witnesses, a religious organization of which he was a member, and that "at the present time I conduct two meetings each week" and attend other meetings "for my own benefit where I occasionally give a short talk" (Gov. Ex. 7). As explanatory of his radio work, he stated (*ibid.*), "The work described in series VIII of the classification questionnaire is done on the swing shift allowing me the time in the Lord's service." Also included in his letter of appeal was an affidavit of Archie R. Dewar, and two statements of Mrs. Margaret Busterna and Mrs. Alga Egge (Gov. Ex. 7; R. 37-38). Dewar's affidavit stated that petitioner had been a minister of the Watchtower Society since July 1947, and that his duties consisted of "* * * preaching publicly and from house to house with the Watchtower publications, and conducting home Bible studies, in accordance with the organization instructions of the Watchtower Society." It further stated that "Mr. Dickinson has been used by me to address the congregation of the Daly City unit of Jehovah's Witnesses on many occasions." The statements of Mrs. Egge and Mrs. Busterna were to the effect that petitioner held

Watchtower Society meetings in their homes on Tuesday and Thursday, respectively. There also appears in the file an affidavit dated September 7, 1950, from C. David Easter in which he stated that he knew petitioner "* * * to be officially in charge of our missionary work in a 5,400 square mile section of territory embracing parts of Fresno and Kings Counties with headquarters in Coalinga, California, since January 3, 1950" (Govt. Ex. 6; R. 37).

Petitioner was ordered to report for physical examination. On February 3, 1951, he was mailed a Certificate of Acceptance (Gov. Exs. 39, 48). Meanwhile his entire file, including the summary of his personal hearing (Gov. Ex. 4), was forwarded to the Appeal Board (R. 39). After further consideration by the Appeal Board on February 19, 1951, petitioner was retained in Class 1-A by unanimous vote (Gov. Ex. 9; R. 39-40).

Thereafter, on February 28, 1951, petitioner wrote to Major General Lewis B. Hershey, National Director of the Selective Service System, requesting an appeal to the President of the United States (Gov. Ex. 5; R. 36). On April 10, 1951, the National Director of Selective Service appealed to the President from the 1-A classification given petitioner by the Appeal Board (Gov. Ex. 13; R. 42). The case was then heard by the National Selective Service Appeal Board, which considered petitioner's entire file. On June 5, 1951, that Board, by unanimous vote, retained petitioner in Class I-A and he was so notified on June 15, 1951 (Gov. Ex. 14; R. 43).

On June 25, 1951, petitioner applied for and was given a special form for conscientious objectors with directions to explain in writing why he had not originally claimed exemption as a conscientious objector at the time he filed his questionnaire (Gov. Ex. 15; R. 45). On July 2, 1951, one day after it was due, the Local Board received the completed form in which petitioner claimed exemption from all military service (Gov. Ex. 16; R. 46–47). Attached to the form was a copy of the Watch Tower Magazine (Def's. Ex. A; R. 55–56). On this same day, however, petitioner was sent an order to report for induction on July 16, 1951 (Gov. Ex. 47). On July 6, 1951, the local board wrote petitioner that it had received his completed conscientious objector form, and again asked him to explain why he had not indicated this objection when he made out his questionnaire on December 10, 1948, and why he had delayed so long in making this claim (Gov. Ex. 19; R. 49). Under date of July 11, 1951, petitioner wrote, and in explanation said, *inter alia* (Gov. Ex. 22; R. 50):

> I would have filed Form 150 much sooner if I had not been so confident that the Local Board would recognise the validity of my claim for exemption as a minister of religion. The Chairman and the Board were so reasonable at my personal appearance that I left fully expecting to be classified IV-D. Perhaps if I had had a more negative attitude I would have cared for my claim of conscientious objection much sooner.

On July 12, 1951, the Local Board reviewed petitioner's claim as a conscientious objector, but decided that a reopening of his classification was unwarranted. He was directed to report for induction on July 16, 1951, as previously ordered (Gov. Ex. 23; R. 61).

Petitioner appeared at the induction station at San Francisco, California, where, on July 17, 1951, he refused to submit himself for induction and he inducted into the Armed Forces of the United States (Gov. Ex. 26; R. 52–54, 61).

He testified that he became a minister in 1947 at a time when he was living at home with his father, but that he did not become a full-time minister until 1949, when at age 19 he left home (R. 57, 107–108). Thereafter, according to his testimony, he was ordained on April 10, 1949 (R. 57). He said he explained to the board that ordination in Jehovah's Witnesses consists of being baptized rather than by other formal ceremony (R. 60–64).[1] Petitioner stated that all Jehovah's Witnesses are ministers because all preach either full or part time. He also said he believed that all in this faith are entitled to exemption from military service on this basis (R. 93).

He testified that he had told the board that on August 1, 1949, he gave up his job and became an unpaid full-time minister, or what is known as a

[1] Petitioner could not remember whether he told his local board that he had been ordained on April 10, 1949, but he did remember that he told them he had been baptized (R. 63–64).

"pioneer" or "company servant" in the Jehovah's Witness faith, in Coalinga, California (R. 69-70, 93). He stated that he thereafter supported himself on the $35 per month which he earned in part-time radio work (R. 69-70, 91, 93). He told the board that his duties in Coalinga consisted of devoting 100 hours per month to door-to-door and sidewalk distribution of religious literature, personal interviews, and generally stimulating interest in the Bible and in Watchtower Society Publications (R. 64, 72, 89-90; Gov. Ex. 11). He stated that he covered a territory of 5,400 square miles in this missionary work (R. 72; Gov. Ex. 6). In addition to his missionary work, he testified that he told the board that he arranged for religious meetings in a public hall in Coalinga, California (R. 70-71, 90; see also Gov. Ex. 11), and that he "delivered the discourses for most of them" (R. 71). He explained to the Board that (R. 72), "It was my duty to see that those missionaries that were associated with me and with the company had a proper distribution of the territory so that everyone in that [5,400 square miles district had the opportunity to know about our work and to attend our meetings which were given for their benefit." Besides participating in the public hall meetings with the others, petitioner in his capacity as "school servant" also counselled students in a Theocratic Ministry School giving them their assignments, and teaching them how to speak and how to study (R. 72).

ARGUMENT

1. Petitioner contends that there is no basis in fact for the local board's denial of his claim for exemption as a minister of religion (Pet. 15–19). Much of his discussion on this point misconceives the limited function of a court in reviewing the validity of Selective Service orders in a criminal case. It does not avail petitioner to attempt to show that improper inferences were drawn from the evidence by his draft board, or to show that its decision was erroneous. "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it [the draft board] gave the registrant." *Cox* v. *United States*, 332 U. S. 442, 448–449; *Estep* v. *United States*, 327 U. S. 114, 122–123.

The local board, the Appeal Board, and the National Selective Service Appeal Board—each of which arrived at the same conclusion on the basis of an independent consideration of all available facts—were amply justified in rejecting petitioner's claim for exemption as a minister of religion. Not only was the showing made to the local board wholly insufficient to prove that petitioner was a minister of religion, but the circumstances under which his claim was made tend to discredit its sincerity. He first claimed to be a minister of religion and to be exempt from military duty as such in his questionnaire. In that same questionnaire he indicated that he was then working forty hours a week for the United States Navy as a radio and radar repairman.

Many months later, at the time he was classified 1-A, he wrote his local board that there had been an important modification in his status since he filed his questionnaire, and he requested an oral hearing to demonstrate to the local board that he was now a full-time ordained minister.

At the hearing before the local board and before the two appellate boards, petitioner produced no evidence to show that he stood in the relationship of minister to a group of congregants of his faith. He produced no evidence to show that he led members of his faith in ordinances of public worship. The evidence does show that he engaged in the same kind of activities which have been consistently rejected by this Court and lower courts, as a basis for collaterally attacking the final administrative classification order. Cf. *Cox* v. *United States*, *supra* (332 U. S. at 444-447); *Martin* v. *United States*, 190 F. 2d 776 (C. A. 4), certiorari denied, 342 U. S. 872; *Swaczyk* v. *United States*, 156 F. 2d 17 (C. A. 1), certiorari denied, 329 U. S. 726; *Rase* v. *United States*, 129 F. 2d 204 (C. A. 6). Petitioner is one of a group known as "Jehovah's Witnesses," all of whom denominate themselves as ministers and who claim exemption from service in the Armed Forces. His main activities consisted of door-to-door and street dissemination of religious literature, personal interviews, and missionary work on behalf of his faith in a large geographical area, also serviced by other members of the same faith, organized in a unit known as a "company."

Petitioner's argument is essentially a reassertion of the claim that members of his religious faith are entitled to put their own meaning on the term

[1] A similar claim was made by petitioner Thompson in *Cox* v. *United States*, *supra* (332 U. S. at 446).

"minister" supplies of the generic use of the term in the statute. This same argument was rejected by this Court in *Dye* v. *United States*, 324 U. S. 442.[1] Moreover, since the *Dye* decision, Congress has passed the Selective Service Act of 1948, in which the term "minister" is explicitly defined. Section 16 (g) (1) [50 U. S. C. App. 466 (g), supra, pp. 19-20]. As there was no opposite intent, the trial board then properly considered as a minister, for draft purposes, only one "who is duly ordained, commissioned, or regularly licensed and who is a member in good standing of a religious sect or organization of which he is a member" and who must be "recognized by such church, sect, or organization as a regular minister" (id., (2)). It does not include one who does not "as a regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization" (id.,

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[1] Petitioner seeks to show a conflict between the opinion of the court below, and *United States ex rel. Ball* v. *Stalter*, 161 F. 2d 633 (C. A. 7). That case arose under the 1940 Act, was decided two years before the decision of this Court in the *Dye* case, and is essentially different on its facts. There, that appellant showed that he had been raised in the Jehovah's Witnesses' faith, that he had been preaching for ten years, and he produced documentary proof to support his claim. Further than that, the court noted that there were no circumstances which imputed a lack of sincerity to his claim. In fact that court noted (151 F. 2d at 638), "There is not a scintilla of proof which impugns . . . honesty, good faith or devotion to the cause." Cf. *Martin* v. *United States*, 190 F. 2d 775 (C. A. 4), certiorari denied, 342 U. S. 872.

(3)). That Congress did not intend to enlarge the meaning of the term "minister" in the 1948 Act is made abundantly clear by the report of the Senate Committee on Armed Services (S. Rep. 1268, 80th Cong., 2d sess., p. 13):

> * * * Serious difficulties arose in the administration and enforcement of the 1940 act because of the claims by members of one particular faith that all of its members were ministers of religion. A minority of the Supreme Court thought that Congress intended to grant an exemption broad enough to include this group. (See the dissenting opinions in *Cox v. United States*, 332 U. S. 442, 455, 457.) In order that there may be no misunderstanding of the fact that the exemption granted is a narrow one, intended for the leaders of the various religious faiths and not for the members generally, the terms "regular or duly ordained ministers of religion" have been defined in section 16 (g). The definition is that which was contained in the 1917 Selective Service Regulations and which was successfully administered without the problems which arose under the 1940 act.

In addition to the lack of a showing that petitioner was a leader of his sect other facts show an opportunism which casts doubt on the validity of petitioner's claim to exemption. His late claim of being a conscientious objector is significant in the fact that he made it after he had failed to demonstrate successfully that he was a minister. It is also significant that although he contended that he held the same

views when he filed his questionnaire many months before, he was at that time working for the United States Navy repairing radar and radio equipment. His contention that he later quit his job with the Navy and thereafter supported himself in part-time radio repair work, his sole source of support, from which he made only $35 a month, may well have appeared to the local board as incredible as it apparently did to the trial court. These facts, taken with his extreme youth and elements of demeanor and deportment evident to both the local board and the trial court but lost in the cold page of the record, may well have caused those bodies to discredit his uncorroborated testimony.

2. Petitioner also contends that the order to submit to induction was illegal and void for the additional reason that his local board failed as allegedly required by 32 C. F. R. 1623.1 (b), 1624.2 (b), and 1626.13 (a), *infra*, pp. 21–22, to reproduce in writing the additional information which he gave them on the occasion of his personal appearance (Pet. 50–56). However, the record discloses that Rose A. Brock, Selective Service coordinator, who testified as a Government witness at the trial, made the following summary of petitioner's testimony at the hearing before the local board (Gov. Ex. 4; R. 36):

> Dickinson. Public building where he preaches. . Has not been ordained. Devotes his full time to the work of preaching. Supports himself through this work. Jehovah's Witness.

Petitioner testified that he had seen this summary of his oral testimony when he had gone to the board to obtain his conscientious objector form, but had made no objection to it at that time (R. 88–89). He said that when he looked at the file he expected to find a (R. 89) "* * * thorough, word-for-word transcript of the whole thing [the entire local board hearing]."

As the court below noted (R. 136), all that the regulations require is that information presented orally by the registrant in addition to what already appears in his file "* * * be summarized in writing" (32 C. F. R. 1624.2 (b), *infra*, p. 22). The local board afforded petitioner an opportunity to come in and prove his claim of an important modification of his status, and the gist of his testimony was recorded and preserved in the file. Although brief, the summary of his testimony before the board adequately summarizes that part of his oral testimony which is supplementary to the information already contained in the Selective Service file. Petitioner points to no salient fact omitted in the summary. And this practice of giving a brief outline of the claimant's evidence has been consistently held to conform to the mandate of the Selective Service regulations. *Tyrrell* v. *United States*, 200 F. 2d 8 (C. A. 9), certiorari denied, 345 U. S. 910; *Niznik* v. *United States*, 173 F. 2d 328, 332–334 (C. A. 6).*

* Petitioner's suggestion (Pet. 53–56) of a conflict with the decision of the Court of Appeals for the Third Circuit in *United States* v. *Zieber*, 161 F. 2d 90, is without substance. In that case, it was not clear from the record as to whether

Furthermore, even if petitioner could show that his additional oral testimony was not adequately summarized, he could not show that such fact prejudiced him before either the Appeal Board or the National Selective Service Appeal Board whose *de novo* action completely superseded the local board action. In addition to his file the Appeal Board had his letter setting out in detail his claim, and affidavits and statements of various witnesses submitted for the first time (Gov. Ex. 7). On appealing to the National Selective Appeal Board, petitioner stated his case very fully in a letter to the National Director of Selective Service (Gov. Ex. 11). Under such circumstances, petitioner could not complain even if a summary by his local board of his additional oral testimony were wholly lacking. *Tyrrell* v. *United States*, *supra* (200 F. 2d at 11); *Cramer* v. *France*, 148 F. 2d 801, 805 (C. A. 9).

CONCLUSION

The decision of the court below is correct; there is no conflict of decisions; and further review is not warranted. Therefore, it is respectfully submitted

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the local board had afforded the registrant an opportunity to present to it new information concerning his status, or whether the oral information he had presented to the local board had ever been presented to the appeal board. Accordingly, the Court of Appeals remanded the case for a new trial for a determination of these issues of fact. Here, of course, the local board considered all the information which the petitioner proffered, and this information was before the appeal boards, both by summary and by separate documents.

that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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June 1952.

APPENDIX

Statutes and Regulations Involved

The Selective Service Act of 1948, 62 Stat. 604, 625, Section 16 (g) (50 U. S. C. App. Supp. V, 456 (g)):

(1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies therof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church,

religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

Selective Service Act of 1948, Section 12 (a), 62 Stat. 604, 622, (50 U. S. C. App., Supp. V, 462 (a)):

Any * * * person * * * who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Regulations, Title 32, C. F. R. (1949 Ed.):

Section 1622.13.

* Class IV-D: Ministers of Religion or Divinity Student.—(a) In Class IV-D shall be placed any registrant:

(1) Who is a regular minister of religion;

(2) Who is a duly ordained minister of religion;

(3) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

(4) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized

theological or divinity school in which he has been pre-enrolled.

* * * * *

SECTION 1623.1:

* * * * *

(b) The registrant's classification shall be determined solely on the basis of the official forms of the Selective Service System and such other written information as may be contained in his file. * * * Since it is imperative that appeal agencies have available to them all information on which the local board determined the registrant's classification, oral information shall not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances shall the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file. None of the provisions of this section shall impair the power of the local board to take notice of the birthday of any registrant and of the fact that the Congress has made registrants of an age liable for induction for military service and in the absence of any other information, when the registrant has failed to furnish such information within the time prescribed, to classify the registrant as available for military service.

SECTION 1624.2:

* * * * *

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which

he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. . . .

* * * * * *

Section 1626.14

(b) Immediately upon an appeal being taken to the appeal board by a person entitled to appeal, the local board shall prepare the Individual Appeal Record (SSS Form No. 120) in duplicate, attaching the original to the inside of the registrant's Cover Sheet (SSS Form No. 101) and placing the duplicate copy in the local board files. The local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and that the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts.

* * * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1951